

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CHRIS WAUGH**

## Claimant

VS.

## PARKWAY CARE HOME

Respondent

AND

**CONSTITUTION STATE SERVICE COMPANY**

Insurance Carrier

AND

# KANSAS WORKERS COMPENSATION FUND

[illegible]

Docket No. 180,719

## ORDER

**ON** the 18th day of January, 1994, the application of the respondent and insurance carrier for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge Alvin E. Witwer dated December 20, 1993, came on before the Appeals Board for oral argument by telephone conference.

**APPEARANCES**

Claimant appeared by his attorney, C. Albert Herdoiza, of Overland Park, Kansas. Respondent and insurance carrier appeared by their attorney, Stephen P. Doherty, of Kansas City, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, W. Fredrick Zimmerman, of Kansas City, Kansas. There were no other appearances.

**RECORD**

The record before the Appeals Board is the same as that considered by the Administrative Law Judge.

**ISSUES**

As a result of a preliminary hearing held on December 15, 1993, Administrative Law Judge Alvin E. Witwer entered an Order dated December 20, 1993, that claimant be provided medical treatment from board certified orthopedic surgeon Fred A. Rice, Jr., M.D., and board certified neurosurgeon Robert M. Beatty, M.D. The respondent and insurance carrier have requested review of that Order and contends the Administrative Law Judge exceeded his jurisdiction in not complying with the law pertaining to change of authorized treating health care providers as set forth in K.S.A. 44-510.

The issues before the Appeals Board are: (1) Whether the Administrative Law Judge exceeded his jurisdiction in authorizing Drs. Rice and Beatty to treat claimant, and (2) whether the Appeals Board has jurisdiction to review this matter.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

(1) The Appeals Board finds that it does not have jurisdiction over this preliminary hearing matter. Therefore, the Order of Administrative Law Judge of Alvin E. Witwer dated December 20, 1993, remains in full force and effect.

Before the Appeals Board can exercise jurisdiction over a preliminary hearing matter the issue must be one of those enumerated in K.S.A. 44-534a, or the Administrative Law Judge must have exceeded his jurisdiction as required by K.S.A. 44-551. As set forth below, the Appeals Board does not have jurisdiction over this matter under either statute.

K.S.A. 44-534a(2), as amended by the 1993 Kansas Legislature, provides that the following issues are deemed jurisdictional and subject to review by the Appeals Board: (1) Whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of employment; (3) whether notice is given or claim timely made; and (4) whether certain defenses apply.

As the issue before the Appeals Board is not one of those enumerated above, the Appeals Board does not have jurisdiction under the provisions of K.S.A. 44-534a. Before the Appeals Board can entertain this review, it must be established that the Administrative Law Judge has exceeded his jurisdiction.

(2) Respondent and insurance carrier contend the Administrative Law Judge exceeded his jurisdiction as he failed to comply with the provisions of K.S.A. 44-510(c) pertaining to the change of an authorized treating health care provider. However, that is not the fact situation before us. The record indicates that the physician of respondent's choice, Dr.

William O. Reed, Jr., rated and ostensibly released claimant from his care and treatment. Therefore, claimant's request for the appointment of Drs. Rice and Beatty is to be treated as a request for medical treatment rather than a request for change of treating health care provider.

The Appeals Board concludes the order in this case does not exceed the jurisdiction of the Administrative Law Judge. K.S.A. 44-534a provides that the Administrative Law Judge at a preliminary hearing may award medical treatment at respondent's expense. The Appeals Board considers the authority to order medical treatment to include authority to require that treatment be provided with a specific provider. The Appeals Board recognizes the respondent does, in the first instance, have authority to designate the authorized treating provider. When, however, the respondent does not do so and medical care is ordered as a result of a preliminary hearing, the Administrative Law Judge may either direct that the respondent choose a provider or, in the alternative, may designate the provider requested by the claimant or from whom claimant has already obtained treatment.

Based upon the above, the Administrative Law Judge has not exceeded his jurisdiction in designating Drs. Rice and Beatty as the authorized treating providers. Therefore, the Appeals Board does not have jurisdiction to review this matter under K.S.A. 44-551.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer dated December 20, 1993, remains in full force and effect as the Appeals Board lacks jurisdiction to review same.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1994.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

cc: C. Albert Herdoiza, 7111 West 98th Terrace, Ste. 140, Overland Park, KS 66212  
Stephen P. Doherty, 707 Minnesota, 100 Security Bank Bldg, Kansas City, KS  
66101  
W. Fredrick Zimmerman, P.O. Box 171234, Kansas City, KS 66117  
Alvin E. Witwer, Administrative Law Judge  
George Gomez, Director